

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE:

MARY EVELYN MOULTON,

Debtor.

CASE NO.: 19-30103-KKS  
CHAPTER: 7

TDMA LLC,

Plaintiff,

v.

ADV. NO.: 19-03011-KKS

MARY EVELYN MOULTON,

Defendant.

**ORDER DENYING, WITHOUT PREJUDICE, DEFENDANT'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND  
MEMORANDUM IN SUPPORT THEREOF (DOC. 49)**

THIS MATTER is before the Court on Defendant's *Motion to Compel Production of Documents and Memorandum in Support Thereof* ("Motion," Doc. 49) and Plaintiff's *Response in Opposition to Defendant's Motion to Compel and Memorandum of Law in Support of Opposition* ("Response," Doc. 58). For the reasons set for below, the Motion is due to be denied, without prejudice.

## **BACKGROUND**

The following facts and sequence of events are not in dispute: On April 23, 2020, Defendant sent Plaintiff discovery requests for production and interrogatories.<sup>1</sup> Plaintiff timely responded to both on May 26, 2020.<sup>2</sup> In June and July of 2020, counsel for both parties engaged in back and forth communication via telephone and written letters regarding the sufficiency of Plaintiff's responses to the discovery requests.<sup>3</sup> After several exchanges between counsel, Plaintiff amended both of its original responses on July 21, 2020.<sup>4</sup> On September 11, 2020, Defendant filed the Motion pursuant to Fed. R. Bankr. P. 9037. In its Response Plaintiff contends, among other things, that the Motion does not comply with this Court's Local Rules.<sup>5</sup>

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<sup>1</sup> *Defendant's First Request for Production to Plaintiff*, Doc. 49-1; and *Defendant's First Interrogatories to Plaintiff*, Doc. 49-2.

<sup>2</sup> *Plaintiff's Response to Defendant's First Interrogatories*, Doc. 49-3; and *Plaintiff's Response to Defendant's First Request for Production*, Doc. 49-4.

<sup>3</sup> Both parties provided copies of the letters exchanged between their counsel, dated on June 16, 2020 and June 22, 2020.

<sup>4</sup> *Plaintiff's Amended Response to Defendant's First Request for Production*, Doc. 49-7; and *Plaintiff's Amended Response to Defendant's First Interrogatories*, Doc. 49-8.

<sup>5</sup> Doc. 58, ¶ 20 n.9.

## DISCUSSION

### The Motion Does Not Comply with N.D. Fla. LBR 7026-1(A)

Fed. R. Bankr. P. 7037 provides that in moving to compel disclosure, the movant must include a certification that it “has in *good faith conferred* or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.”<sup>6</sup> N.D. Fla. LBR 7026-1 provides, in pertinent part:

- (A) Before filing *any motion* related to discovery, counsel for the moving party *shall confer* with counsel for the opposing party in a *good faith effort to resolve by agreement* the issues raised, and shall file with the Court at the time of filing the motion a statement certifying that counsel has so conferred with opposing counsel and that counsel have been unable to resolve this dispute (“Certification”).

(1) Consistent with District Local Rule 7.1(B), the requirement for the moving party to “confer” within the meaning of this rule requires such party to at a minimum afford counsel for the non-moving party twenty-four (24) hours to respond, absent extraordinary circumstances. Counsel for the moving party must make at least two attempts to contact the non-moving party, with a minimum of one telephonic attempt, before filing a motion without having actually conferred. In such an event, the Certification shall identify each attempt to reach the non-moving party, identifying the time of the attempt and the

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<sup>6</sup> Fed. R. Civ. P. 37(a) is made applicable by Fed. R. Bankr. P. 7037 (emphasis added).

means employed for each attempt, as well as any applicable extraordinary circumstances.

(2) As a general rule, exchanges of email or other correspondence alone do not constitute a proper conferral within the meaning of this rule.

(3) The failure of a moving party to properly confer prior to filing a discovery motion pursuant to this rule may subject the filer to sanctions.<sup>7</sup>

In *In re Camferdam*, this Court stated “[f]ailure of counsel to effectively communicate, or to communicate other than via email or in letters, will not be tolerated; it does a disservice to the parties and the Court.”<sup>8</sup> In construing a similar local rule, the Southern District of Florida concluded that failure to communicate with opposing counsel because it may be futile is not an excuse.<sup>9</sup> This Court agrees. N.D. Fla. LBR 7026-1 does not contain a futility exception.

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<sup>7</sup> N.D. Fla. LBR 7026-1(A)(1)–(3) (emphasis added). N.D. Fla. LBR 1001-1(C) provides that the Local Rules of the United States District Court, Northern District of Florida shall apply in all bankruptcy cases, including contested matters and adversary proceedings to the extent that they are not inconsistent with these Local Rules. N.D. Fla. Loc. R. 7.1(B) imposes the same conferral requirements.

<sup>8</sup> *James v. Camferdam (In re Camferdam)*, Adv. No. 18-03009-KKS, 2019 WL 3316133, at \*2 (Bankr. N.D. Fla. May 15, 2019).

<sup>9</sup> See *Whatley v. World Fuel Servs. Corp.*, No. 20-20993-MC-SCOLA/TORRES, 2020 WL 4818924, at \*3–4 (S.D. Fla. Aug. 19, 2020) (construing Local Rule 7.1(a)(3), which requires “counsel for the movant to confer (orally or in writing), or make reasonable effort to confer (orally or in writing) . . . [and] to certify that such conferral took place” and finding that “Local Rule 7.1 does not contain a futility exception.”).

Here, counsel conferred in June and July, between Plaintiff's first and amended responses. But Defendant does not allege any attempt to confer before filing the Motion. For this reason, the Motion must be denied.<sup>10</sup>

**The Motion Does Not Comply with  
N.D. Fla. LBR 7026-1(B)**

N.D. Fla. LBR 7026-1(B) governs motions to compel discovery pursuant to Fed. R. Bankr. P. 7037. A motion to compel must include (1) the full contents of each discovery request that is at issue; (2) the objection and grounds for said objection as stated by the opposing party; and (3) the reasons why each objection should be overruled and motion granted.<sup>11</sup> Defendant's Motion does not comply.

In its Motion Defendant does not quote in full Plaintiff's objections or the grounds therefore, nor does Defendant state the reason(s) the objections should be overruled. Rather, Defendant simply states, "Plaintiff objects to the answering of the interrogatories on several bases yet proceeds to provide a response 'notwithstanding said

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<sup>10</sup> This Court did not and will not read e-mail or other written communications between counsel in support or opposition of discovery disputes. Reading such communications is a waste of judicial resources and may result in the pleading to which they are attached being denied or stricken on that basis alone. *See Camferdam*, 2019 WL 3316133, at \*2.

<sup>11</sup> N.D. Fla. LBR 7026-1(B)(1)–(3).

objections' . . . . [Plaintiff's] answers are not sufficient."<sup>12</sup> This language does not comply with N.D. Fla. LBR 7026-1(B) and is not specific enough to permit the Court to rule on whether Plaintiff's responses to discovery are complete without having to review all discovery-related pleadings on the Docket.

### CONCLUSION

The Court does not enjoy undertaking discovery disputes. Rarely does this Court see a truly justiciable discovery issue that parties have tried, *in good faith*, to resolve before seeking the Court's intervention. In this Court, parties must *confer* and otherwise act in good faith to resolve any discovery dispute before requesting this Court's assistance or risk being sanctioned under Bankruptcy Rule 9011.

For the reasons stated it is

ORDERED:

1. Defendant's *Motion to Compel Production of Documents and Memorandum in Support Thereof* (Doc. 49) is DENIED without prejudice.

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<sup>12</sup> Doc. 49, ¶¶ 18 & 19.

2. The hearing scheduled on November 10, 2020 is CANCELED.

DONE and ORDERED November 9, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

Karen K. Specie  
United States Bankruptcy Judge

Defendant's Counsel is directed to serve a copy of this Order on interested parties and file a proof of service within three (3) days of entry of this Order.